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SETTING UP A “PET TRUST”

Care for Your Pets, Even When You Can't Care for Them

For many seniors, pets are beloved family members. They're constant, never-complaining companions.

But there's a worry: What will happen to your pets if you become incapacitated or after your death? You certainly don't want them to be mistreated or euthanized prematurely.

You may think that your friends or relatives will care for your pets if you can't. They might—but they might not.

Strategy: Consult an attorney about setting up a trust for the benefit of your pet or pets.*

LACK OF “WILL” POWER

Some people provide for pets in their wills.

Example: Cathy Davis leaves \$10,000 in her will to her niece Marina, with instructions to care for Cathy's beloved terrier, Scrappy.

Reality: Such provisions are not enforceable. Marina can pocket the money and abandon the dog without fear of legal reprisals.

The same outcome would result if Cathy leaves \$10,000 directly to Scrappy in her will. Pets are considered to be property, so they can't legally inherit anything.

MUCH BETTER WAY

Instead of relying upon your will, which won't be effective, create a trust.

Start by contacting an attorney familiar with pet trusts and estates. You can find one by entering “pet trusts”

*Currently, there are 37 states and the District of Columbia that allow pet trusts. Check with your state attorney general (www.naag.org) or local Humane Society to find out the law in your state.

into an Internet search engine. Or go to my Web site, The Hirschfeld Pet Trust, www.pettrustlawyer.com, and request a call from a pet trust expert.

Fees will vary from attorney to attorney and from area to area. Expect to spend several hundred dollars and up, depending on how much detail you want in the trust documents.

Every trust has a *trustee*—or cotrustees—who is legally responsible to care for the assets in the trust.

When trust beneficiaries can't care for themselves, as is the case with a pet trust, *guardians* (often known as caretakers) for the beneficiaries should be named. Oftentimes, friends or loved ones will be more than happy to agree to serve as caretakers.

Vital: While not legally required, it's a good idea to get the advance consent of a trustee or guardian before naming him/her in a legal document. Name backups in case your first choice becomes unable or unwilling to serve. Have all parties sign the pet trust showing their agreement.

Caution: With a pet trust, the beneficiaries can't complain if they receive poor service from the trustee. Therefore, name someone you believe to be conscientious.

Even so, you may prefer to name one person as a trustee and another as caretaker for your pet so that each party can keep an eye on the other.

Your pet trust also may designate another party as a “trust protector” to disburse funds to the trustee, who then disburses funds to the caretaker.

Because some animals outlive all caretakers and trustees, consider naming one or two not-for-profit, no-kill animal shelters as backup caretakers. Check the

“Worldwide Shelter Directory” on the Hugs for Homeless Animals Web site (www.h4ha.org).

SOONER OR LATER

There are two strategies to follow when creating a pet trust...

- **During your lifetime.** You can arrange for the trust to become effective while you're alive.

- **At your death.** Your will can call for the creation of a pet trust.

Pros and cons: Creating a trust while you're alive means that you won't know if you'll outlive your pet, making the trust unnecessary.

Waiting until your death for the trust to go into effect will eliminate the risk of providing for a pet who has predeceased you. However, there's a chance your pet will lack care if you are unable to care for your pet.

Strategy: Create a pet trust while you are alive. Stipulate that the trust will become effective only when you are unable to care for your pet or you die.

If you set up a pet trust during your lifetime, you can transfer assets into it at any time. A trust established after your death by the person you appointed in your will to be caretaker or trustee can be funded from your estate.

Recommended: Make arrangements for the trust to be funded when necessary—at your incapacity or your death.

Funding a pet trust can be tricky. You'll want to feel comfortable that your pet is adequately provided for. However, if you fund such a trust lavishly, you may open the door to legal challenges. Other potential heirs might attempt to undo the

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entire arrangement, saying that you were not of sound mind.

Always give good reasons in the trust document for the amount you transfer to a pet trust. This will substantiate your good judgment and enforce the pet trust in case of a contest.

One approach is to work with an unrelated party, such as a certified public accountant (CPA), to determine a reasonable amount to fund the trust.

Example: Your CPA might determine that your total cost for caring for your pet (food, vet bills, boarding) is \$1,000 per year. If you were to die or become incapacitated tomorrow, your pet might reasonably live another 10 years.

Strategy: Thus, you might fund your pet trust with at least \$10,000. Add

money to fund an aging pet's additional medical needs. You might also want to compensate the trustee and the caretaker. And you can leave money to hire an attorney in case your pet trust is challenged—or to pay additional costs if your pet lives with you in an assisted-living facility.

Tactic: Rely upon an insurance policy on your life for some of the trust's funding. Provide that any assets remaining at your pet's death will go to a charity, perhaps an animal shelter. *Note:* Income generated by assets in a pet trust is taxable.

FINAL THOUGHTS

Trusts are very versatile. When drawing up a pet trust, you can make specific provisions for the care of these close companions.

Examples: A pet trust can include instructions requiring the caretaker to bring the pet for visits with you should you become incapacitated and your condition prevents the pet from living with you. Often, such visits can improve the pet owner's physical and mental health.

If you have more than one pet, the trust documents can stipulate they remain together, if that's your wish. Alternatively, your dog might be entrusted to someone with a big yard while your cat's guardian is another person, who is not allergic.

Day-to-day directions: You also can spell out what your pet likes to eat, which vet it has been seeing, and what medications it needs. Include whatever instructions you would like in order to ensure continuity of care for these cherished friends. ■ ■